IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1590 OF 1983

The Hindustan Spinning & Weaving Mills Limited, a Company registered under the Companies Act, 1956, and having its registered office at Sir Vithaldas Chambers, 16, Bombay Samachar Marg, Bombay 400 023. ... Plaintiff

Versus

The Cotton Corporation of India Limited, a company registered under the Companies Act, 1956, having its registered office at 12th Floor, Air India Building Nariman Point, Bombay 400 021. ... Defendants

Mr. S. Purohit with Ms. Neeta Gaglani i/by M.K. Ambalal & Co. for Plaintiff.

Mr. V. Mahajan i/by Divekar & Co. for Defendants.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 26, 2005

ORAL JUDGMENT:

. The Plaintiff herein has filed suit against defendant for the principal amount of Rs.84,708/- along with interest thereon. It is the case of the Plaintiff that defendant was an exclusive agency to import cotton from abroad for the use and benefit of textile mills in India. There was a running account of the Plaintiffs with defendant. From the amount which was due and payable, by the defendants to the Plaintiff, defendants wrongfully claimed sum of Rs.84,708/- being transportation charges on account of import of 1629 bales of Sudan Cotton at

the port of Bhavnagar sometime in January and February and March, 1978. It is the case of the Plaintiff that they informed defendants in answer to the defendant's letter dated 8.5.1979 by reply which is dated 5.6.1979, that the Plaintiffs were not liable to pay the sum of Rs.84,708/- as there was dispute between the parties. The matter was referred to arbitration by agreement dated 14.3.1980 between Plaintiff and defendants. The award was published on 30th July, 1982 whereby the claim of the defendant for transportation charges of Rs.84,708/- was rejected. On failure by the defendants to pay the amount, wrongfully withheld, the present suit was filed on 18.8.1983 claiming that amount as also interest.

. On behalf of the defendants, written statement has been filed contesting the claim of the Plaintiff herein. While setting out their case, the defendants did not deny that arbitration agreement has been entered into and the learned arbitrator has passed the award, in Paragraph 12 of the written statement. The defendants have also raised a plea that suit is barred by limitation and also by principle analogous to res judicata.

2. Parties have filed compilation of documents and

considering that and the issue involved parties agree that the suit can be decided based on the pleadings and have chosen to argue the matter without leading any oral evidence and on the documents as filed.

3. The main contention urged on behalf of the Plaintiff is that the suit is barred by limitation as set out in Paragraph 4. According to Plaintiff, the cause of action arose in the year 1979 when the defendants withheld the amount. The suit was field on 18.8.1983 and consequently the suit being filed after the period of three years from occurrence of the cause of action, is barred by limitation. In the first instance, both the parties agree that the dispute regarding transportation charges had been referred to arbitration. Both the parties agree that there was an arbitration agreement dated 14.2.1980. The subject matter of the arbitration reference was as under :

> "Parties hereto agree that all disputes, differences and claims between the parties hereto regarding the liability as to the transport charges of 1929 bales from Bhavnagar to Bombay be and are hereby referred to arbitration of Shri.

P. Shanker Narayan and Shri. N.G. Thakkar, Advocates."

. The arbitrators thereafter gave award on 30.7.1982 which is also not disputed as can be seen from Para 12 of the written statement filed by the defendants. By that award, the claim by the defendants for transportation charges was rejected. In other words, atleast from 30.7.1982, defendants would be unlawfully holding the money belonging to Plaintiffs thereby giving rise to a cause of action in their hands. Therefore, whatever demand may have been earlier, by the subsequent acts, a fresh cause of action arose in favour of Plaintiff pursuant to award dated 30.7.1982. Considering that contention, the first point advanced that suit is barred by limitation has to be rejected. In the light of that matter, issue No. 4 is answered against defendant herein.

4. With that we may consider another issue, namely whether the suit is barred by principles of res judicata. In the instant case, no doubt the parties are the same and the subject matter is the same. The award was not passed by a competent civil court or a civil court having jurisdiction. In other words, it cannot be said that the suit as

now filed is barred by the principle of res judicata and or principle analogous to res judicata. It would have been open for the plaintiff to raise that issue if the Plaintiffs had filed counter claim. That was not done. In view of that, it must be held that the contention as raised that the suit is barred by principles of res judicata or principle analogues to res judicata will have to be rejected.

. It must also be borne in mind that defendant is a Government Corporation being State under Article 12 of the Constitution of India. Once their claim for the amount of transport charges had been rejected, then fairness demanded that they ought to have paid the amounts to the Plaintiffs.

6. The next issue raised is whether the defendants can now plead that Plaintiffs are not entitled for the relief as prayed for in the principle sum of Rs.84,708/-. In my opinion, though issue has not been framed, the issue will have to be considered whether it be barred by principles of issue estoppal. In the instant case, the very issue was in issue before the learned Arbitrator. The Arbitrator answered the same against the defendants. Once that was answered against

defendants, the defendants who could have challenged the award cannot now set up a plea in respect of the same or similar issue. In my opinion, therefore, the defendants are barred by the principle of issue estoppal from now contending that the Plaintiffs are not entitled to the said claim. Though there was no positive award in favour of the Plaintiffs, it must be held that considering the terms of the reference, that the said issue was answered in favour of the Plaintiffs.

. The claim therefore, of the Plaintiffs in the sum of Rs.84,708/- which the Plaintiffs were entitled to pursuant to the award by the Tribunal rejecting the claim of the defendants has to be allowed. That being the case, Issue No. 2 and 6 are answered against defendants and consequently Issue Nos. 1, 3 and 7 will have to be answered in favour of the Plaintiffs.

6. The only issue that remains is issue of interest which the Plaintiffs have claimed at the rate of 20% p.a. There was no agreement between the parties for payment of interest at the rate of 20%. At the highest therefore, it will be the provisions of the Interest Act considering the

demand made by the Plaintiff which interest, Plaintiff would be entitled to. That interest will be the rate of interest that nationalised banks gives on fixed deposits. Considering the above, from 18.8.1983, the defendants will be entitled to interest at the rate of 6% on the principal amount of Rs.84,708/- till decree and at the same rate of 6% on the sum of Rs.84,708/- from the date of decree till final payment.

7. Suit therefore, decreed in the sum of Rs.84,708/- with interest thereon at 6% p.a. from 18.8.1983 to the date of the decree and thereafter on the principal amount of Rs.84,708/- at 6% p.a. from decree till payment. Each party to bear their own costs.

(F.I. REBELLO,J.)